

D.T.E. 03-76-D

August 20, 2004

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for year 2001 by March 31, 2002, and their annual returns for year 2002 by March 31, 2003, and to pay statutory forfeitures.

In the Matter of:

LD Exchange.Com, Inc.	03-76-25
Talk Unlimited Now, Inc.	03-76-33
Touch America, Inc.	03-76-36
UKI Communications, Inc.	03-76-38
United States Telecommunications, Inc.	03-76-39

I. INTRODUCTION

The Department of Telecommunications and Energy (“Department”) requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services, must be registered by having an approved tariff on file with the Department as well as a current statement of business operations.

Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994); G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31 by March 31 of the following year, in a format prescribed by the Department. Annual Returns, D.T.E. 03-76, Vote and Order to Open Investigation at 1 (2004) (“Vote and Order”); Annual Returns, D.T.E. 02-13, Vote and Order to Open Investigation at 1 (2002); G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return by the deadline forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed. G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in additional penalty. Id. If the Department finds that a common carrier has neglected to make returns as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

A number of telephone companies failed to file annual returns on a timely basis and pay statutory forfeitures to the Commonwealth for year 2002. Although this Order pertains to several investigations of failure to file annual returns with nearly identical facts, the dockets are not consolidated, and thus the findings of fact and directives issued in this Order are applicable to each company, individually.

II. PROCEDURAL HISTORY

On February 3, 2004, the Department opened separate investigations into the failure by 40 telephone companies to file annual returns and pay statutory forfeitures to the Commonwealth, including 25 telephone companies that failed to file their 2002 annual returns and pay statutory forfeitures. Vote and Order. The Department determined that these 25 companies were registered during 2002 to provide telecommunications services in the Commonwealth, because, at the time of the Vote and Order, the Department had on file approved tariffs and statements of business operations for these carriers, and the Department had these documents on file during 2002. Id. at 1.

The Department opened investigations into the 40 companies, docketing each separately as indicated in Appendix A and Appendix B to this Order.¹ This Order pertains to the

¹ In the Vote and Order, the Department opened investigations regarding Paramount International Telecommunications, Inc. (“Paramount”), docketed as D.T.E. 03-76-12, and TeleCents Communications, Inc. (“TeleCents”), docketed as D.T.E. 03-76-34. However, the Department subsequently discovered that TeleCents had in fact complied with the annual return filing requirement, and did not owe an overdue annual return or statutory forfeitures. Paramount complied with the Notice of Investigation and Hearing (April 21, 2004) by filing its annual returns for 2001 and 2002, each showing no intrastate revenues. The Department notified the companies that they were in
(continued...)

following dockets: LD Exchange.Com, Inc., D.T.E. 03-76-25; Talk Unlimited Now, Inc., D.T.E. 03-76-33; Touch America, Inc., D.T.E. 03-76-36; UKI Communications, Inc., D.T.E. 03-76-38; and United States Telecommunications, Inc., D.T.E. 03-76-39.²

Pursuant to notice duly issued,³ the Department conducted public and evidentiary hearings in each of these proceedings on April 14, 2004, and May 25, 2004. None of the parties entered an appearance or filed comments.

III. ANALYSIS AND FINDINGS

A. Companies Operating in Massachusetts in 2002

1. Introduction

LD Exchange.Com, Inc., Touch America, Inc., UKI Communications, Inc., and United States Telecommunications, Inc. were registered common carriers of telecommunications services during 2002, because each company had an approved tariff and statement of business operations on file with the Department for that year. D.P.U. 93-98,

¹(...continued)

compliance, and that it had cancelled the hearings involving TeleCents and Paramount and dismissed both cases. D.T.E. 03-76-34, Hearing Officer Memorandum Re: TeleCents Communications, Inc. (April 30, 2004); D.T.E. 03-76-12, Hearing Officer Memorandum Re: Paramount International Telecommunications, Inc. (May 14, 2004).

² As discussed below, all of these companies have ceased operating in Massachusetts, but they still owe annual returns and associated statutory forfeitures for the prior years in which they were operating in the Commonwealth.

³ The Department sent a Notice of Hearing and Investigation to the last known address of each of the companies on February 4, 2004 and April 21, 2004, and published the Notice in the Boston Globe on April 26, 2004.

at 12. Therefore, each company was obligated to file a 2002 annual return pursuant to G.L. c. 159, § 32; G.L. c. 166, § 11. Vote and Order at 1-2.

Prior to commencing these investigations, the Department granted an extension for filing of 2002 annual returns past the March 31, 2003 annual deadline without incurring the statutory forfeiture, but only if the company filed by the new deadline.⁴ The Department extended the filing deadline for 2002 to September 19, 2003, and notified the telecommunications companies by certified mail. Id. The Department did not grant any additional extensions. To date, none of the companies that are the subject of this Order have filed the overdue annual returns. Each of the four companies has, as discussed below, subsequently cancelled its tariff in Massachusetts.

The Department served Notice of its investigation and hearing upon the companies, advising each company that the Department was investigating the company's neglect to file annual returns and that failure to respond or to produce the information requested in the Notice would lead to adverse findings of fact and orders for corrective action. See Vote and Order at 2-4. None of these companies responded to the Notice.

Accordingly, the Department finds that LD Exchange.Com, Inc., Touch America, Inc., UKI Communications, Inc., and United States Telecommunications, Inc. each neglected to file a 2002 annual return by March 31, 2003, and that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies to each company

⁴ The Department has the authority to set a deadline for filing annual returns other than March 31 "for good cause shown." G.L. c. 159, § 32.

calculated from that date,⁵ up to the date of cancellation of its tariff, when the company was no longer doing business in the Commonwealth. See D.T.E. 02-13-F at 3-5.

Further, the Department must consider whether each company's refusal or neglect to file was unreasonable. G.L. c. 166, § 12. Every telephone company that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. LD Exchange.Com, Inc., Touch America, Inc., UKI Communications, Inc., and United States Telecommunications, Inc have provided no excuse for the failure to file their returns more than a year after the deadline.

Moreover, in addition to failing to respond to the notice of these investigations, or to appear on either of the two hearing dates, each of these four companies ignored or failed to respond to notices from the Department's Telecommunications Division reminding the company that it failed to file its annual return, and extending the deadline (Exh. 3).⁶ Although the Department is not required to provide reminders to companies that have represented to the

⁵ The extension of the filing deadline applied only to companies that filed by the new deadline. Because the companies named in this Order did not file their annual returns by the extended deadline the Department offered, the forfeitures are calculated from the original statutory annual due date of March 31. See D.T.E. 02-13-A; D.T.E. 02-13-D; D.T.E. 02-13-F.

⁶ The Department's August 22, 2003 letter extending the 2002 annual return filing deadline to September 19, 2003 is Exhibit 3 in each of the five dockets.

Department that they have the ability to comply with the Commonwealth's statutory requirements, the companies' failure to respond compounds those companies' neglect of their reporting obligations. Accordingly, the Department finds that the refusal or neglect on the part of LD Exchange.Com, Inc., Touch America, Inc., UKI Communications, Inc., and United States Telecommunications, Inc. to file annual returns is unreasonable. Therefore, both the continuing daily forfeiture, accrued from March 31, 2003 until the date of cancellation of the company's tariff, and the additional \$500 forfeiture, are applicable to each these companies for failure to file a 2002 annual return. These forfeitures are calculated as set forth below.⁷

2. LD Exchange.Com, Inc.

The record in D.T.E. 03-76-25 contains five exhibits.⁸ LD Exchange.Com, Inc. requested that the Department cancel its tariff on December 11, 2003, because it was no longer providing service in the Commonwealth (Exh. 4), and the Department did so on December 15, 2003 (Exhs. 2, 5). Therefore, the daily forfeiture for the 2002 annual return, accrued between March 31, 2003, and December 15, 2003, a total of 258 days overdue, is

⁷ Pursuant to G.L. c. 166, § 12, the statutory forfeitures are calculated at the rate of five dollars per day for the first 15 days overdue, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the date of cancellation of the tariff.

⁸ Exhibit 1 is the company's statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company's tariff, filed with the Department and in effect in 2002. Exhibit 3 is the letter the Department's Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003. Exhibit 4 is the letter from LD Exchange.Com, Inc. to the Department, dated December 11, 2003, requesting cancellation of its tariff. Exhibit 5 is the Department's Telecommunications Division database record of the cancellation.

\$3,645. With the additional forfeiture of \$500, the total forfeiture LD Exchange.Com, Inc. owes is \$4,145.

3. Touch America, Inc.

The record in D.T.E. 03-76-36 contains five exhibits.⁹ The Department cancelled the tariff of Touch America, Inc. on February 28, 2004 (Exhs. 2, 5) at the request of the company (Exh. 4). In a letter dated January 21, 2004, Touch America stated that it would have no Massachusetts customers as of February 28, 2004, due to its voluntary petition to reorganize its business and financial structure pursuant to Chapter 11 of the United States Bankruptcy Code, Case No. 03-119195-MFW (Bankr. D.Del., filed June 19, 2003) (id. at 2). However, the company's bankruptcy petition in 2003 and cessation of Massachusetts operations in 2004 did not affect its prior obligation to file an annual return for 2002, a year in which it was doing business in the Commonwealth. Therefore, the daily forfeiture for the 2002 annual return, accrued between March 31, 2003, and February 28, 2004, a total of 333 days overdue, is \$4,770. With the additional forfeiture of \$500, the total forfeiture Touch America, Inc. owes is \$5,270.

⁹ Exhibit 1 is the company's statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company's tariff, filed with the Department and in effect in 2002. Exhibit 3 is the letter the Department's Telecommunications Division sent to the company extending the 2002 annual return filing deadline to September 19, 2003. Exhibit 4 is the letter, dated January 21, 2004, from Touch America, Inc. to the Department requesting cancellation of its tariff. Exhibit 5 is the Department's Telecommunications Division record of the cancellation.

4. UKI Communications, Inc.

The record in D.T.E. 03-76-38 contains four exhibits.¹⁰ UKI Communications, Inc. requested that the Department cancel its tariff on January 27, 2004, because it was discontinuing its intrastate toll service (Exh. 4), and the Department did so on February 2, 2004 (Exh. 2). Therefore, the daily forfeiture for the 2002 annual return, accrued between March 31, 2003, and February 2, 2004, a total of 307 days overdue, is \$4,380. With the additional forfeiture of \$500, the total UKI Communications, Inc. owes is \$4,880.

5. United States Telecommunications, Inc.

The record in D.T.E. 03-76-39 contains six exhibits.¹¹ The Department cancelled the tariff of United States Telecommunications, Inc. on January 1, 2004 (Exh. 2, 5), because the records of the Secretary of the Commonwealth Corporations Division indicated that the

¹⁰ Exhibit 1 is the company's statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company's tariff, filed with the Department and in effect in 2002. Exhibit 3 is the letter the Department's Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003. Exhibit 4 is the letter, dated January 27, 2004, from UKI Communications, Inc. to the Department requesting cancellation of its tariff.

¹¹ Exhibit 1 is the company's statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company's tariff, filed with the Department and in effect in 2002. Exhibit 3 is the letter the Department's Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003. Exhibit 4 is the record of the Secretary of the Commonwealth, from the Secretary's website, indicating that United States Telecommunications, Inc. filed a Certificate of Resignation of Resident Agent, effective October 23, 2003. Exhibit 5 is the Department's Telecommunications Division record of the cancellation of the tariff. Exhibit 6 is the Notice of hearing mailed by the Department to the last known address of United States Telecommunications, Inc., which was returned to the Department as undeliverable.

company's resident agent in Massachusetts resigned effective October 23, 2003¹² (Exh. 4). Therefore, the daily forfeiture for the 2002 annual return, accrued between March 31, 2003, and January 1, 2004, a total of 275 days overdue, is \$3,900. With the additional forfeiture of \$500, the total United States Telecommunications, Inc. owes is \$4,400.

B. Talk Unlimited Now, Inc.

The record in D.T.E. 03-76-33 contains five exhibits.¹³ Talk Unlimited Now, Inc. submitted a certificate of withdrawal requesting that the Department cancel its tariff on March 4, 2004 (Exh. 4), and the Department did so on March 12, 2004 (Exh. 2). The Certificate of Withdrawal states that the company never provided services in Massachusetts after it filed its statement of business operations and tariff on April 17, 2002 (Exhs. 1, 2). Therefore, we find that Talk Unlimited Now never earned any intrastate revenues and was not "doing business in the commonwealth" in 2002 for purposes of G.L. c. 166, §§ 11, 12.

¹² The Department takes administrative notice, pursuant to 220 C.M.R. § 1.10(2), of the document filed with the Secretary of the Commonwealth, pursuant to G.L. c. 181, § 4A, indicating that the resident agent in Massachusetts for United States Telecommunications, Inc. resigned (Certificate of Resignation of Resident Agent, August 28, 2003).

¹³ Exhibit 1 is the company's statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company's tariff, filed with the Department and in effect in 2002. Exhibit 3 is the letter the Department's Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003, which was returned to the Department as undeliverable. Exhibit 4 is the certificate of withdrawal, dated March 4, 2004, sent by Talk Unlimited Now, Inc. to the Department requesting cancellation of its tariff. Exhibit 5 is the Notice of Investigation and Hearing (February 4, 2004; April 21, 2004) mailed by the Department to the last known address of Talk Unlimited Now, Inc., which was returned to the Department as undeliverable.

Consequently, Talk Unlimited Now, Inc. was not required to file a 2002 annual return and no statutory forfeitures apply. See D.T.E. 02-13-G at 3-4; D.T.E. 02-13-F at 3-5.

C. Conclusion

The cancellation of the tariffs of LD Exchange.Com, Inc., Touch America, Inc., UKI Communications, Inc., and United States Telecommunications, Inc. in 2003 and 2004 does not affect the requirement that these companies file their returns for 2002, a year in which they were doing business in the Commonwealth. Therefore, LD Exchange.Com, Inc., Touch America, Inc., UKI Communications, Inc., and United States Telecommunications, Inc. remain obligated to file their 2002 annual returns and pay the applicable statutory forfeitures. Talk Unlimited Now, Inc., was not doing business in the Commonwealth in 2002, and the investigation regarding that company is therefore terminated.

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is

ORDERED that LD Exchange.Com, Inc.; Touch America, Inc.; UKI Communications, Inc.; and United States Telecommunications, Inc. each shall immediately file an annual return for the year 2002 and pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order; and it is

FURTHER ORDERED that the findings reached herein are applicable to LD Exchange.Com, Inc., individually, in docket D.T.E. 03-76-25; and it is

FURTHER ORDERED that the findings reached herein are applicable to Touch America, Inc., individually, in docket D.T.E. 03-76-36; and it is

FURTHER ORDERED that the findings reached herein are applicable to UKI Communications, Inc., individually, in docket D.T.E. 03-76-38; and it is

FURTHER ORDERED that the findings reached herein are applicable to United States Telecommunications, Inc., individually, in docket D.T.E. 03-76-39; and it is

FURTHER ORDERED that the investigation relative to Talk Unlimited Now, Inc. in D.T.E. 03-76-33 be terminated; and it is

FURTHER ORDERED that the findings of fact and directives herein shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G.L. c. 159, § 39.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

APPENDIX A

Telephone companies that failed to file annual returns for years 2001 and 2002

<u>Carrier</u>	<u>Docket Number</u>
ESS.Com, LLC	03-76-1
Euronet Communications Corp.	03-76-2
Gerson Group	03-76-3
Long Distance Billing Services, Inc.	03-76-4
Massachusetts Local Telephone Company	03-76-5
Maxcess, Inc.	03-76-6
Maxtel USA, Inc.	03-76-7
Norstar Communications, Inc.	03-76-8
Ntera, Inc.	03-76-9
Optical Telephone Corporation	03-76-10
Paradigm Communications Corporation	03-76-11
Paramount International Telecommunications, Inc.	03-76-12
Pride America, Inc.	03-76-13
SecurFone America, Inc.	03-76-14
StormTel, Inc.	03-76-15

APPENDIX B

Telephone companies that failed to file an annual return for year 2002

<u>Carrier</u>	<u>Docket Number</u>
Americom Technologies	03-76-16
CCMA	03-76-17
Columbia Telecommunications, Inc. d/b/a aXessa	03-76-18
ConnectAmerica, Inc.	03-76-19
Equal Access Communications, LLC	03-76-20
Global Crest Communications, LLC	03-76-21
Globalcom, Inc.	03-76-22
Integrated Communications Consultants	03-76-23
Intelecall Communications, Inc.	03-76-24
LD Exchange.Com, Inc.	03-76-25
Maxxis Communications, Inc.	03-76-26
Natel, LLC	03-76-27
North American Telephone Network, Inc.	03-76-28
PF.Net Network Services Corporation	03-76-29
Power-Finder West Communications, LLC	03-76-30
Radiant Telecom, Inc.	03-76-31
TalkingNets Holdings, LLC	03-76-32
Talk Unlimited Now, Inc.	03-76-33
TeleCents Communications, Inc.	03-76-34
Telis Communications Group, Inc.	03-76-35
Touch America, Inc.	03-76-36
TransNet Connect, Inc.	03-76-37
UKI Communications, Inc.	03-76-38
United States Telecommunications, Inc.	03-76-39
WDT World Discount Telecommunications Company	03-76-40